HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 25827 OF 2006

DATED: 13.12.2006

Between:

K. Appa Rao

… Petitioner

and

The Govt. of Andhra Pradesh, represented by its Principal Secretary, Revenue and others.

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.25827 OF 2006

ORAL ORDER:

The writ petition is filed seeking the following relief:

> "… to issue any appropriate Writ, order or direction particularly one in the nature of Mandamus to declaring the inaction of the respondents not receiving the amount as indicated in G.O.Ms.No.578 Rev. (Endt.IV) Dept dt.19-8-2000 and G.O.Ms.No.384, dt. 28.2.2004 from the petitioner for the land for an extent of 3556 Sq.yds (0.291 Hect) in S.No.76/2 and S.No.198/11 of Adivivaram village, Chinagadili Mandal, Visakhapatnam District and consequently direct the respondent to receive the amount and issue no objection certificate as per the GOs of the Government, holding the field, within a time frame and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The writ petition commences with a contradictory descriptionof the petitioner's entitlement to land in an extent of 3556 sq.yards (0.29 hectares) in Sy.Nos. 76/2 and 198/11, Adivivaram village, Chinagadili mandal, Visakhapatnam District.

Relevant facts:

Petitioner claims to be in possession of the property. According

to the petitioner, the petitioner and 14 others constituted a firm by name "M/s Sri Purna Jyothi Food Products" under a partnership deed dated 5.4.1981. They pursued the commercial venture till 30.3.1992 and purchased the above specified land with a building for Rs.2,00,000/- from the A.P. State Finance Corporation (for short 'the Corporation') under a registered sale deed dated 6.1.1982 under document No.186/1982. The land purportedly belonged to M/s Kesari Food Products, another commercial venture, which mortgaged the same to the Corporation for its business purposes. On default by M/s Kesari Food Products, the Corporation sold the property under Section 29 of the State Financial Corporations Act, 1951 (for short 'the Act') and M/s Sri Purna Jyothi Food Products purchased the property in 1982.

(2). Sri Purna Jyothi Food Products, of which the petitioner was a partner was dissolved on 31.3.1992 and the partners are stated to have entered into a Memorandum of Understanding that the petitioner should enjoy the property (land of 3556 sq.yards) with absolute rights. These terms are claimed to have been reduced in the deed of dissolution on 31.3.1992 executed by all the partners.

(3). Sri Purna Jyothi Food Products during its juristic life and during the course of its business activities obtained a term loan from Andhra Bank, Simhachalam branch, whose instalments were not paid in time and regularly and as a result, the petitioner asserts, the dues to the Andhra Bank mounted and the Bank filed an application before the Debt Recovery Tribunal. Mean while, the petitioner negotiated with the Bank and cleared the debt due to it from M/s Purna Jyothi Food Products, by payment of Rs.15,00,000/- under a one time settlement.

(4). Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, had vast extents of land in Visakhapatnam District including in Adivivaram village. On account of the regnant mal-administration including abdication of the statutory responsibility by the endowment officials, the vast extents of lands of the said Devasthanam were in illegal occupation and encroachment by scores of individuals, who went on an overdrive to illegally occupy the Devasthanam land, complacent in the belief that the endowment administration was in a stage of terminal collapse and was not likely to effectively move against illegal encroachments.

As a way out of this self-generated mismanagement, generated by State actors of the Endowment Department, the State Government issued G.O.Ms.No.578 Revenue dated 19.8.2000, being an Order in a series of Government Orders on the subject labeled "Regulation of

encroachments in respect of the lands belonging to Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam". G.O.Ms.No.578 is asserted to be the culmination of a House Committee constituted by the A.P. Legislative Assembly.

The significant aspects of the Orders in G.O.Ms.No.578 are that the lands of the Devasthanam in illegal occupation are to be regularized and for this purpose a Committee of officers specified in para (9) of the G.O. would be formed on a date to be notified by the Commissioner of Endowments which Committee will be responsible for fixing up the land value for regularization, for collection of the value fixed and to initiate eviction proceedings where the encroachers do not comply with the proposals for regularization and to ensure avoidance of further encroachments. Paragraph (10) of the G.O. sets out the procedure for regularization of encroachments. It specifies that 70% of the market value (as determined by the Committee constituted in para 9) should be paid if the encroachment is for a residential purpose; and where the encroachment is for commercial purpose,100% of the market value needs be paid. A generous time is also provided for the payment. In case of encroachers who fall below the poverty line or are otherwise eligible for allotment of house-sites through the normal Government programmes, para (10) ordains that the Collector may acquire such lands by paying the land value as fixed by the Government, to the Devasthanam or give an equal extent of Government land to the temple. There are other house keeping provisions to ensure divestiture of the Devasthanam of its lands; vestituture of the Devasthanam lands to benefit the encroachers, a scheme generous to the encroachers and fatal and subversive to the Devasthanam. Among the provisions set out in para (10) of the G.O. are also methodology for arriving at a market value.

Section 80 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') deals with alienation of immovable property belonging to Charitable and Hindu religious institutions and endowments. On legislative and statutory text and precedential authority, alienation of Devasthanam lands should only be by a process of public auction so as to ensure

transparency and normative integrity to the process in order to ensure a fair return to Devasthanams and endowment institutions, on their properties. Even the power of the Commissioner to accord sanction for alienations is hedged in with a number of conditionalities specified in Clauses (i) to (iii) of Section 80 (1) (b). The first proviso to Section 80 (1) consecrates in the State Government an enabling power to permit the sale of immovable property otherwise than by public auction; if (and only if) such a procedure, in deviance (of normal procedure of sale by public auction) is in the interests of the institution or endowment and only for reasons to be recorded.

The learned Government Pleader for Endowments nor the learned counsel for the petitioner are unable to show a whisper of reasons recorded by the State Government in G.O.Ms.No.578; reasons which are mandatory under the first proviso to Section 80 of the Act. Why alienation at 70% of the market value (market value itself arrived at on an artificial process of computation) in favour of encroachers for residential purposes is in the interests of the Devasthanam, is not apparent from G.O.Ms.No.578.

The State in the context of lands belonging to Devasthanams or Wakfs exercises a power generically belonging to the police power of the State for ensuring proper management of the material resources of religious institutions, for the benefit of such religious institutions or denominations. In the Constitutional context, the State may not perhaps act to liquidate endowments or wakfs or other religious

denominations. Such acts of liquidation or irrational executive action which subvert the material integrity of endowment institutions would fall foul of the Constitutional purposes for which representative Governments are constituted under our Constitution.

The learned Government Pleader for Endowments states that G.O.Ms.No.578 is no longer operational and has been substituted by the orders issued in G.O.Ms.No.253 Revenue (Endts.IV (2) Department dated 3.3.2005, whereunder a Committee has been constituted to advise the Commissioner of Endowments on the several aspects specified in paras 9 to 13. A perusal of the provisions of G.O.Ms.No.253 also reveals curious facets. Para 14 of the G.O. states that the expenditure on account of TA and DA etc., in respect of non-official members of the Committee should be borne by the Simhachalam Devasthanam. The Simhachalam Devasthanam is thus mulcted with the expenditure incurred for the liquidators of its properties. Be that as it may.

It is not clear why the relentless process of law is not put into execution to evict encroachers, despite the wide and effective statutory powers available under Sections 83 to 85, which are not the dilatory processes before the Civil courts of competent jurisdiction. Perhaps, there is a conflict of administrative interest between political judgment and the statutory obligations under the provisions of the Act. These may require to be examined in an appropriate context while considering the validity of the Government orders.

For the nonce, the petitioner's claim for a direction to the

respondents to receive the amount and issue a ‘no objection certificate’ cannot be recognized nor relief granted as the prima facie jurisdiction of the State to issue orders for alienation of the land of the Devasthanam to encroachers without recording reasons why such alienation (otherwise than by public auction) is in the interests of Devasthanam, is not recorded in any order placed before this court for perusal. No legitimate authority is shown that permits such alienation.

The writ petition is without merits and is accordingly dismissed at the stage of admission. No order as to costs.

GODA RAGHURAM, J

Date: 13.12.2006
CVM